

21 C.J.S. Courts § 228

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Courts

M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc; and Lonnie E. Griffith, Jr., J.D.

VI. Rules of Adjudication, Decisions, and Opinions

B. Stare Decisis

4. Dicta

§ 228. Statement in syllabus or opinion

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In a jurisdiction where the syllabus of a decision states the law of the case, it is generally improper for a lower court to determine that the syllabus is obiter dictum.

In a jurisdiction where the syllabus of a decision states the law of the case,¹ it is generally improper for a lower court to determine that the syllabus is obiter dictum,² but obiter in it must be so recognized.³ If a justice assigned to write an opinion discusses matters or expresses an opinion on a question that is not in the syllabus, that language constitutes merely the justice's personal opinion.⁴

If a state constitution requires that new points of law be articulated in the syllabus, new law may not be announced in a footnote, and language in a footnote generally should be considered obiter dicta.⁵ However, in is not the case that everything in a per curiam opinion beyond the syllabus point is merely dictum.⁶

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Footnotes

¹ § 242.

² Ohio—State ex rel. Heck v. Kessler, 72 Ohio St. 3d 98, 1995-Ohio-304, 647 N.E.2d 792 (1995).

- 3 Ohio—Williamson Heater Co. v. Radich, 128 Ohio St. 124, 190 N.E. 403 (1934).
- 4 Ohio—State v. Wilson, 58 Ohio St. 2d 52, 12 Ohio Op. 3d 51, 388 N.E.2d 745 (1979).
- 5 W. Va.—State ex rel. Medical Assurance of West Virginia, Inc. v. Recht, 213 W. Va. 457, 583 S.E.2d 80 (2003).
- 6 W. Va.—Walker v. Doe, 210 W. Va. 490, 558 S.E.2d 290 (2001).

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